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AGENDA REPORT
Consent | Information

August 6, 2018

TO: San Diego Commissioners

FROM: Keene Simonds, Executive Officer

SUBJECT: Commission Counsel Memorandum |
Enactment of Assembly Bill 1361 and LAFCO's Role in
Overseeing Extension of Water Services to Indian Lands

SUMMARY

The San Diego Local Agency Formation Commission (LAFCO) will receive a memorandum from Commission Counsel summarizing the recent enactment of Assembly Bill 1361 (Garcia). This legislation establishes special and expedited LAFCO approvals for municipal water districts to provide outside water service to Indian lands by contract or agreement. Markedly, this includes directing LAFCOs to approve all qualifying requests with the caveat terms and conditions may be imposed. The memorandum is being presented to the Commission for information.

BACKGROUND

Assembly Bill 1361 was authored by Eduardo Garcia (56th District) and signed by Governor Brown on October 3, 2017. The legislation became effective on January 1, 2018 and allows a municipal water district to apply to LAFCO to extend water service to Indian lands by contract at substantially the same terms as existing ratepayers. LAFCO is required to approve the application with the ability to impose terms. The law sunsets on January 1, 2023.

DISCUSSION

This item is for San Diego LAFCO to receive a memorandum from Commission Counsel on the pertinent details concerning the recent enactment of Assembly Bill 1361 and related impacts on LAFCO. The memorandum is attached and has been prepared at the request of the

San Diego LAFCO

August 6, 2018 Regular Meeting

Agenda Item No. 8 | Enactment of Assembly Bill 1361 | Outside Water Service to Indian Lands

Executive Officer given the legislation's sponsor – Sycuan Band of Kumeyayy Nation – is local and presumably will make use of the new law.

ANALYSIS

See the attached memorandum.

RECOMMENDATION

It is recommended San Diego LAFCO receive the item and discuss as warranted.

ALTERNATIVES FOR ACTION

This item is being presented for information only; no actions.

PROCEDURES

This item has been placed on the San Diego LAFCO's agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation unless otherwise specified by the Commission.

Respectfully,



Keene Simonds
Executive Officer

Attachment:

- 1) Commission Counsel Memorandum

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MEMORANDUM

TO: San Diego County Local Agency Formation Commission FILE NO: 49021.0001

FROM: Douglas M. Johnson, Assistant General Counsel DATE: July 23, 2018

CC: Keene Simonds, Executive Officer
Michael G. Colantuono, General Counsel
Holly O. Whatley, Assistant General Counsel

RE: New Legislation — Assembly Bill 1361 on LAFCO Review of Extensions of Water Service to Indian Lands

Executive Summary. AB 1361¹ (Garcia, D – Coachella) authorizes a municipal water district to apply to LAFCO to extend water service to Indian lands outside the district's boundaries as if the Indian lands had been fully annexed into the district. The bill requires LAFCO to approve such application, subject to several conditions, until January 1, 2023.

Existing law. The Municipal Water District Law of 1911 requires districts to provide water service to an Indian tribe's lands outside the district's boundaries at substantially the same terms as those imposed on a district's existing customers, upon the tribe's satisfaction of certain conditions. The Cortese-Knox-Hertzberg Act requires a district to receive written approval from LAFCO before it may provide new or extended services by contract outside the district's boundaries.

In 2016, the Legislature passed Assembly Bill 2470 (Gonzalez, D – San Diego) exempting the Sycuan Band of Kumeyayy Nation in San Diego County from the annexation proceedings under the Cortese-Knox-Hertzberg Act typically required for the tribe to receive water on its lands outside a municipal water district's jurisdictional boundaries.

¹ Wat. Code, § 71611.5, as amended by Stats. 2017, ch. 449.

Assembly Bill 1361. This bill extends the exemption in AB 2470 to all California Indian tribes meeting certain conditions for about a five year period. It acknowledges that Indian tribes are independent sovereign nations, and seeks to avoid the threat to tribal sovereignty caused by annexation of tribal lands into a district as a condition of extending service. Instead, AB 1361 allows districts to provide water service to an Indian tribe at substantially the same terms applicable to the district's existing customers as though the tribe were fully annexed into the district and any other local agency required to supply water service.²

For a district to provide water service to a tribe's lands that are not within a district, the tribe must first establish:

- The lands were owned by the tribe on January 1, 2016;
- The lands are contiguous with at least two municipal water districts;
- The lands lie within the special study area of at least one district; and,
- At least 70 percent of the Indian tribe's total Indian lands are currently within the boundaries of one or more districts.³

However, even if a tribe cannot meet these requirements, it can still receive water service from a municipal water district if it demonstrates that the Indian tribe:

- complies with all federal and tribal laws;
- obtains all federal and tribal approvals necessary for the applicable district to provide water service to the tribal lands on substantially the same terms applicable to customers of the district; and
- accepts, by agreement, all terms of, and payments to (including service payments), the district and any public agency providing water to that district, as if the Indian tribe's lands were fully annexed into the district and into the service area of any other public agency, which terms and

² Wat. Code, § 71611.5, subd. (a)(1).

³ Wat. Code, § 71611.5, subd. (a)(1)(A) – (D).

payments are also a condition of continued service by a district and by any public agency providing water to said district.⁴

This bill requires LAFCO to approve a request by a district to provide extended water service Indian lands that meet the above-mentioned requirements, but also authorizes LAFCO to impose terms and conditions on those water services under section 56886 of the Cortese-Knox-Hertzberg Act. Such terms should be similar to those imposed on all agency service recipients without discrimination. A district must provide the water extension agreement to the applicable LAFCO.⁵

Finally, LAFCO may not approve an application on or after January 1, 2023, but a previously-approved extension of service may continue beyond that date if the district continues to comply with the conditions imposed by LAFCO.⁶

Recommendation and Conclusion. AB 1361 exempts Indian tribes seeking water service from a municipal water district from Cortese-Knox-Hertzberg's limitation on out-of-area service agreements provided certain requirements are met. AB 1361 allows LAFCOs discretion to impose terms and conditions on these service agreements and those conditions should be similar to those imposed on all agency service recipients without discrimination.

Thank you for the opportunity to assist. If you have any questions about this legislation, please contact Michael Colantuono at (530) 432-7357 or MColantuono@chwlaw.us, or Holly Whatley at (213) 542-5704 or HWhatley@chwlaw.us, or Doug Johnson at (530) 208-5367 or DJohnson@chwlaw.us.

⁴ Wat. Code, § 71611.5, subd. (b)(1) – (3).

⁵ Wat. Code, § 71611.5, subd. (a)(2)(A).

⁶ Wat. Code, § 71611.5, subd. (a)(2)(B).

Keene Simonds, Executive Officer
July 23, 2018
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